REMARKS

Reconsideration of the application, as amended, is requested. Claims 1, 3, 5, and 11 have been amended. Claim 2 is canceled. No new matter has been added. Claims 1, 3 – 15 remain in this application.

Claims 1, 3 - 10

In section 5 the Office Action rejects claims 1, 3 – 10 under 35 U.S.C. § 102(e) as being anticipated by US Patent Number 6,112,239 issued to Kenner, et al., herein referred to as Kenner. Applicants have amended claims 1, 3, and 5 to overcome this rejection and respectfully traverse this rejection as it pertains to claims 4, 6 – 10.

Independent claim 1 requires the steps of, "retrieving a list of stream servers from an Universal Description, Discovery, and Integration (UDDI) directory service, evaluating the list of stream servers, selecting one of the stream servers on the list, and initiating streaming from the selected stream server, wherein the step of evaluating the list of stream servers further comprises the steps of: retrieving and considering the stream server's capabilities, retrieving and considering the format(s) in which the media file is presented, and retrieving and considering preferences from the client."

Kenner teaches a method and system for a user to effectively find the most efficient delivery/mirror site wherein the delivery site then distributes web content to the user (Col 5, line 52 – 60). Subsequently the particular efficient delivery site is utilized for the delivery of web content to the user for future requests. (Col 5, line 60 – Col 6, line 3). Kenner also teaches utilizing network performance data to effectively predict the most efficient delivery site. (Col 6, line 16 – 39).

Kenner does not teach retrieving a list of stream servers from an Universal Description, Discovery, and Integration (UDDI) directory service. Kenner teaches delivery sites to be provided in a "delivery site file" from a MSP (mirror service provider). A MSP is a lexicographer term used in Kenner. A UDDI directory service is a term of art with specific meaning. The office action states that, "a database _can_ be a directory service." However

applicants suggest advising MPEP § 2131 that states that in anticipating prior art "*[t]he identical invention must be shown in as complete detail as is contained in the ... claim.*" In a § 102 rejection this sort of interpretation is improper. The identical invention must be shown, and quite simply a database is not identical to a directory service.

Further applicants have added a claim element so that independent claim 1 now requires, "retrieving and considering the format(s) in which the media file is presented." (See page 8, line 20 for support). The applicants submit that Kenner teaches choosing a most efficient mirror site. Since the object of Kenner is to determine an efficient mirror site, it is not concerned with retrieving and considering the format(s) in which the media file is presented. After a thorough review, nowhere in Kenner does it teach retrieving and considering the format(s) in which the media file is presented. In this light, Kenner does not anticipate the required elements of independent claim 1.

The applicants also identify that dependent claim 4 requires, "retrieving and considering the player availability." The office action relies on the specific teaching of Kenner of Col. 6, lines 13-15 and further stating that, "where outage metric can be interpret as if resources are available to execute the file, which can be a software or media player." This particular passage in Kenner speaks of network analysis. "*[A] System Outage Metric for each product category determines annualized outage frequency, annualized downtime, annualized supplier attributable outage frequency and annualized supplier attributable downtime*. System outage applies to both hardware and software, and *is a measure of complete loss of functionality of partial or total system*."[1] Interpreting an outage metric as "retrieving and considering the player availability" is quite overreaching. Again applicants suggest advising MPEP § 2131 that states that in anticipating prior art "*[t]he identical invention must be shown in as complete detail as is contained in the ... claim.*" In a § 102 rejection this broad interpretation is improper. The identical invention must be shown, and "retrieving and considering the player availability" is not identical to an outage metric. The applicants further understand that Kenner can not be read in a vacuum, in that Kenner as a whole needs to be read and not merely the passages cited in the office action. The applicants would like to reassure the examiner that Kenner as a whole was analyzed and nowhere does Kenner teach considering the player availability in determining

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[1] http://www.networkmagazineindia.com/200104/comm1.htm

which stream server to select. Again the object of Kenner is to choose the most efficient (i.e., speed) mirror site and does not consider those things (i.e., such as player availability) as taught in the present invention.

In view of the foregoing comments, the applicants respectfully submit that independent claim 1 is in condition for allowance. Because dependent claims 3 – 10 properly depend on independent claim 1, and that independent claim 1 is in condition for allowance, the applicants argue that claims 3 – 10 are in condition for allowance. Consequently the 35 U.S.C. § 102(e) rejection should be removed from independent claim 1 and those claims dependent (i.e., claims 3 – 10).

Claims 11 - 14

In section 5 the Office Action also rejects claims 11 – 14 under 35 U.S.C. § 102(e) as being anticipated by Kenner. Applicants respectfully traverse this rejection as it pertains to claims 11 – 14.

Independent claim 11 requires the steps of, "retrieving a list of stream servers from an Universal Description, Discovery, and Integration (UDDI) directory service, evaluating the list of stream servers, selecting a stream server on the list, detecting the data transfer rate between the client machine and the distributed communication system, intercepting a request for streaming a media file if the stream server can not handle the format of the requested streaming media file, modifying the streaming request by appending preference information for streaming of the requested media file, and sending the modified streaming request to the stream server selection unit."

Kenner teaches a method and system for a user to effectively find the most efficient delivery/mirror site wherein the delivery site then distributes web content to the user (Col 5, line 52 – 60). Subsequently the particular efficient delivery site is utilized for the delivery of web content to the user for future requests. (Col 5, line 60 – Col 6, line 3). Kenner also teaches utilizing network performance data to effectively predict the most efficient delivery site. (Col 6, line 16 – 39).

Kenner does not teach retrieving a list of stream servers from an Universal Description, Discovery, and Integration (UDDI) directory service. Kenner teaches delivery sites to be

provided in a "delivery site file" from a MSP (mirror service provider). A MSP is a lexicographer term used in Kenner. A UDDI directory service is a term of art with specific meaning. The office action states that, "a database _can_ be a directory service." However applicants suggest advising MPEP § 2131 that states that in anticipating prior art "_[t]he identical invention must be shown in as complete detail as is contained in the ... claim._" In a § 102 rejection this sort of interpretation is improper. The identical invention must be shown, and quite simply a database is not identical to a directory service.

In view of the foregoing comments, the applicants respectfully submit that independent claim 11 is in condition for allowance. Because dependent claims 12 – 14 properly depend on independent claim 11, and that independent claim 11 is in condition for allowance, the applicants argue that claims 12 – 14 are in condition for allowance. Consequently the 35 U.S.C. § 102(e) rejection should be removed from independent claim 11 and those claims dependent (i.e., claims 12 - 14).
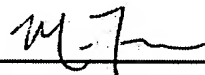
Claim 15

In view of the foregoing comments (described above in the Claim 1, 3 – 10 section) and amendment, the applicants respectfully submit that independent claim 1 is in condition for allowance. Applicants also respectfully submit that though claim 15 is an independent claim, claim 15 requires the process elements recited in allowable independent claim 1. Because independent claim 1 is in condition for allowance, the applicants argue that claim 15 is also in condition for allowance.

CONCLUSION

In view of the foregoing comments and amendments, the Applicants respectfully submit that all of the pending claims (i.e., claims 1 and 3-15) are in condition for allowance and that the application should be passed to issue.

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Respectfully submitted,

By: _____

Matthew C. Zehrer, Patent Agent
Registration No.: 58,158
IBM Corporation - Department 917
3605 Highway 52 North
Rochester, Minnesota 55901-7829

Telephone: (507) 253-2555
Fax No.: (507) 253-2382